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22 INTEL CORPORATION

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA
25 SAN FRANCISCO BRANCH

26 DUALCOR TECHNOLOGIES, INC.

27 Plaintiff,

28 v.

INTEL CORPORATION,

Defendant.

CASE NO. C 07 CV 04425

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED] ORDER
(Civil Local Rule 16-9)**

**Date; December 7, 2007
Time: 1:30 p.m.**

Plaintiff DualCor Technologies, Inc. ("DualCor") and Defendant Intel Corporation ("Intel")
hereby respectfully submit their Joint Case Management Statement pursuant to Civil Local Rule 16-
9.

JOINT CASE MANAGEMENT STATEMENT

1 1. Jurisdiction and Service

2 The court has jurisdiction of this action under 28 U.S.C. §§1331 and 1338(a) and (b).
3 Intel Corporation, the sole defendant, has been served, and has filed an answer.

4 2. Facts

5 DualCor asserts that it first adopted and used the name and mark “dualcor” in
6 December, 2003. On May 14, 2004, DualCor filed with the United States Patent and Trademark
7 Office an application for the “DUALCOR” trademark. On July 25, 2006, the “DUALCOR”
8 trademark was registered in the United States Patent and Trademark Office under United States
9 Trademark Registration No. 3,121,648. DualCor asserts that since approximately July, 2006, Intel
10 has used the DualCor name and mark in its marketing efforts, under the slogan “Dual-Core. Do
11 More.” DualCor contends that Intel’s use of the name “Dual-Core” is likely to cause confusion,
12 mistake, or deception among consumers as to the source, quality and nature of DualCor’s goods.

13 Intel disputes these allegations and contends that Plaintiff’s trademark rights, if any,
14 are limited, and do not preclude Intel’s non-trademark use of the term “dual-core” to describe its
15 technology. In fact, Intel and many other third parties have used the term long *before* Plaintiff
16 changed its name from GCVI, Inc. to DualCor Technologies in December 2003 or first used
17 “DualCor” as a trademark in December 2005. Moreover, Intel’s use of the phrase “Dual-Core. Do
18 More.” in association with Intel’s various microprocessors, is always accompanied by the INTEL®
19 mark and Swirl logo. Intel denies that its use of the phrase “Dual-Core. Do More.” has caused or is
20 likely to cause confusion among consumers as to the source of Plaintiff’s goods.

21 3. Legal Issues

22 The principal disputed points of law presently known to the parties are:

- 23 a. priority of use of the DualCor name and mark and the phrase “dual-
24 core”
- 25 b. the validity of Plaintiff’s rights in the DualCor name and mark;
- 26 c. whether Intel has unfairly used Plaintiff’s mark and whether there is a
27 likelihood of confusion between Intel’s use of the term “Dual-Core” in the phrase “Dual-Core. Do
28 More,” and DualCor’s use of its own DualCor mark on the parties’ respective products. The parties

1 dispute each of relevant likelihood-of-confusion factors set forth in the *Sleekcraft* decision. *AMF*
2 *Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–49 (9th Cir.1979); and

3 d. whether Intel's use of "dual-core" is a non-trademark, fair use.

4 4. Motions

5 There are no prior or pending motions. The parties anticipate that there will be
6 motions for summary judgment and/or partial summary judgment.

7 5. Amendment of Pleadings

8 Although amendments are not presently contemplated, the parties propose a deadline
9 of January 31, 2008 for amendment of pleadings.

10 6. Evidence Preservation

11 a. DualCor has attempted in good faith since at least January 1, 2006, to
12 preserve electronic documents and paper documents germane to its intellectual property claims,
13 including the claims asserted in this lawsuit. DualCor's effort has included a policy not to erase
14 voice mails, emails, or other electronically recorded material that is or may be relevant to its
15 intellectual property rights.

16 b. Intel has taken appropriate steps to preserve evidence relevant to the issues in
17 this action and which relate to Intel's use of the accused phrase "Dual-Core. Do More."

18 Additionally, the parties agreed during the meeting of counsel that, as to electronic
19 discovery, the parties could limit searches for and production of electronically stored information to
20 custodians reasonably likely to have relevant information, and to avoid unduly burdensome searches
21 such as of backup tapes or dynamic databases (including automatically deleted or overwritten data).

22 7. Disclosures

23 In compliance with the initial disclosure requirements of Fed. R. Civ. P. 26, the
24 parties have agreed to exchange initial disclosures on November 30, 2007.

25 8. Discovery

26 No discovery has been completed to date. Intel served written discovery on
27 November 21, 2007. The parties do not anticipate the need to propose limitations or modifications
28 of the discovery rules. The parties propose the following discovery plan, subject to Intel's intended

1 motion that the Court bifurcate liability and damages in this case:

- 2 a. Percipient discovery to close June 16, 2008;
- 3 b. Expert disclosures, including expert reports, to be exchanged June 23, 2008;
- 4 c. Rebuttal reports to be exchanged July 23, 2008;
- 5 d. Expert discovery to close August 13, 2008.

6 9. Class Actions

7 Not applicable.

8 10. Related Cases

9 Not applicable.

10 11. Relief

11 Plaintiff seeks injunctive relief to prohibit Intel from using the DualCor name and
 12 mark. DualCor also seeks disgorgement of profits received by Intel from its use of the DualCor
 13 name and mark, as well as payment of damages caused by the alleged infringement of Intel.
 14 Pending receipt of initial disclosures and discovery, DualCor is not yet able to quantify its
 15 disgorgement and damage claims.

16 Intel disputes that Plaintiff is entitled to any relief and that Intel has used or is using
 17 the "DualCor name and mark." Intel contends that, as a matter of law in the Ninth Circuit, a
 18 plaintiff is not entitled to a disgorgement of profits absent a showing of willfulness, which is not
 19 present in this case.

20 12. Settlement and ADR

21 The parties have stipulated to private mediation through JAMS, to be completed on
 22 or before March 28, 2008. DualCor expects to serve a set of interrogatories, and to take a small
 23 number of depositions, perhaps 2 or 3, in preparation for mediation. Intel will require Plaintiff's
 24 full and complete responses to its discovery requests and expects to take select (1 or 2) depositions
 25 of Plaintiff's witnesses in preparation for mediation.

26 13. Consent to Magistrate Judge for all Purposes

27 DualCor consents to a Magistrate Judge for all purposes. Intel respectfully requests
 28 that the your Honor conduct all further proceedings including trial and entry of judgment in this

1 case, and does not consent to a Magistrate Judge for all purposes.

2 14. Other References

3 The parties do not believe that the case is suitable for reference to binding
4 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

5 15. Narrowing of Issues

6 At this time the parties have not agreed upon particular methods to expedite the
7 presentation of evidence at trial, although as discovery progresses, the parties will consider any
8 stipulations to streamline the presentation of evidence at trial.

9 As soon as practicable, Intel expects to file a motion seeking bifurcation of the issues of
10 liability from the issues of damages and equitable relief because Intel believes it is likely to prevail
11 on the issue of liability, and it would be an efficient and economical use of judicial resources to
12 resolve this issue first before burdening the parties and the Court with time consuming and
13 expensive discovery on the issues of "damages" and Intel's alleged profit (direct or indirect) from
14 its use of the phrase "Dual-Core. Do More.". Intel contends that DualCor will not be prejudiced by
15 a bifurcation, especially where an accounting of Intel's profits may only be considered after liability
16 and willfulness are established.

17 16. Expedited Schedule

18 The parties do not believe that this is the type of case amenable to expedited
19 scheduling with streamlined procedures.

20 17. Scheduling

21 The parties respectfully propose the following schedule:

- 22 a. Percipient discovery to close June 16, 2008;
- 23 b. Expert disclosures, including expert reports and all materials required under
24 Fed. R. Civ. P.26(a)(2), to be exchanged June 23, 2008;
- 25 c. Rebuttal reports to be exchanged July 23, 2008;
- 26 d. Expert discovery to close August 13, 2008;
- 27 e. Dispositive motions to be filed on or before October 13, 2008;
- 28 f. Pre-Trial Conference to be held December 1, 2008 or January, 2009 at the

1 Court's convenience.

2 18. Trial

3 Dualcor and Intel have requested a jury trial, which the parties estimate will take 3 to
4 5 days.

5 19. Disclosure of Non-Party Interested Entities or Persons

6 a. DualCor has filed its "Certificate of Interested Entities or Person" required by
7 Civil Local Rule 3-16. The individuals or entities known by DualCor to have either a financial
8 interest or other kind of interest in the proceeding, or which may be substantially affected by the
9 outcome of the proceeding, are Daehong Technew Corporation, Lawrence L. Reece Trust, Timothy
10 J. Glass, Bryan T. Cupps, Dong Kwam Kim, and Wanho Park.

11 b. Intel has filed its "Certificate of Interested Entities or Person" as required by
12 Local Rule 3-16. There are no individuals or entities known by Intel that are "Interested
13 Entities or Persons" pursuant to Local Rule 3-16.

14 20. Other Matters

15 The parties at this time do not propose other orders that may facilitate the just,
16 speedy and inexpensive disposition of this matter.

17 DATED: November 30, 2007

RUBY & SCHOFIELD

18
19 BY 

20 ALLEN RUBY
Attorneys for Plaintiff

21 DATED: November 30, 2007

HOWREY, LLP

22
23 BY 

24 Bobby A. Ghajar
25 Attorneys for Defendant
26
27
28

1 **[PROPOSED] ORDER**

2 The Joint Case Management Statement and Proposed Order is hereby adopted by the Court
3 as a Case Management Order for the case and the parties are ordered to comply with this Order. In
4 addition, the Court orders as follows:

5
6
7 IT IS SO ORDERED

8
9
10 Date: _____

_____ UNITED STATES DISTRICT JUDGE